

New Guidelines for Competitive Food and Beverage Sales

KRS 158.854 requires the Kentucky Board of Education to adopt an administrative regulation that sets minimum nutritional standards for food and beverage items that are offered for sale through vending machines, school stores, canteens and as a la carte items on the cafeteria lines.

The law also stipulates that the sales from vending machines, stores and canteens; those sales in competition with the school breakfast and lunch programs, cannot take place from the time of the arrival of the first students in the morning until 30 minutes after lunch.

The Board of Education has adopted a regulation containing the required standards. That regulation is 702 Kentucky Administrative Regulation (KAR) 6:090. It contemplates three “windows” of time during the school day.

- The first “window” opens when the first child arrives in the morning and closes 30 minutes after lunch. While this “window” is open, no sales of any food or beverage item may take place except as part of the school breakfast or lunch program.
- The second “window” opens at 30 minutes after lunch and closes at the end of the last instructional period. While this “window” is open, vending machines, school stores and school canteens, etc., may sell food and beverage items that meet the standards in the regulation.
- The third “window” opens at the close of the last instructional period in the afternoon and closes at the arrival of the first student on the following morning. While this third “window” is open, there are no nutrient standards restricting what may be sold.

Beverage Offerings

The regulation requires that beverages sold through vending machines, school stores, canteens or as a la carte items on the cafeteria lines are restricted to:

1. Plain or flavored milk containing no more than 1% milk fat (that is, 1% or skim);
2. Plain or flavored, non-carbonated water containing zero calories;
3. 100% fruit or vegetable juice or any combination equaling 100%;
4. Any other beverage containing no more than 10 grams of sugar per serving; and
5. The volume size is limited to 17 ounces in elementary schools/20 ounces in middle and high schools, except for water.

These standards apply to beverages available as a la carte items on the cafeteria line during breakfast and lunch (while the first “window” is open) as well as beverages made available through the machines and stores from 30 minutes after the last lunch period until the end of the last instructional period (when the second “window” opens). The standards are the same for elementary, middle and high schools with the one exception of volume size. The Kentucky Board of Education strongly encourages all middle and high schools to offer the smaller volume beverages.

What will be different? These standards will not allow the sale of regular soft drinks or regular sports drinks (Gatorade/Powerade/All Sports) until after school. Those of you who offer the regular “sports” drinks as a la carte items on the cafeteria line will have to replace those with the low calorie “sports” drinks. The machines and stores may still offer diet soft drinks and the low calorie sports drinks. No juice “drinks” until after school. Milk vending machines, stores, etc., must offer only 1% or skim. Bottled water offerings cannot contain calories. Again, these restrictions do apply to beverages that are offered for a la carte sale on the cafeteria lines during breakfast and lunch.

There are no restrictions on what may be sold after the end of the last instructional period (when the third “window” opens).

Food Offerings

While the first “window” is open, sales are limited to those conducted as part of the school breakfast and lunch programs and schools may offer for a la carte sale on the cafeteria line any item that meets the following standards:

1. Calories from fat are limited to no more than 30% of total calories; [exceptions: reduced fat cheese (2%), nuts, seeds, nut butters];
2. Calories from saturated fat are limited to no more than 10% of total calories;
3. Grams of sugar are limited to no more than 32% of total weight with a ceiling of 14 grams (exceptions: fresh, frozen canned or dried fruits and vegetables);
4. Milligrams of sodium per serving are limited to 300 in chips, cereals, crackers, baked goods and other snack items;
5. Milligrams of sodium per serving are limited to 450 in pastas, meats and soups;
6. Milligrams of sodium per serving are limited to 600 in pizza, sandwiches and main dishes;
7. The portion/pack size for chips, crackers, popcorn, cereal, trail mix, nuts, seeds or jerky is limited to 2 ounces;
8. The portion/pack size for cookies is limited to 1 ounce;
9. The portion/pack size for cereal bars, granola bars, pastries, muffins, doughnuts, bagels or other bakery-type items is limited to 2 ounces;
10. The portion/pack size for non-frozen yogurt is limited to 8 ounces; and
11. The portion/pack size for frozen dessert items, including low fat (1% milk fat) or fat free ice cream, frozen fruit juice bars, or frozen real fruit items is limited to 4 ounces.

In addition, schools may offer for a la carte sale any item that can be part of a reimbursable breakfast or lunch, according to the federal meal pattern regulations.

When the second “window” opens, schools may offer for sale through vending machines, stores, canteens, etc., food items that meet the following standards:

1. Calories from fat are limited to no more than 30% of total calories; [exceptions: reduced fat cheese (2%), nuts, seeds, nut butters];
2. Calories from saturated fat are limited to no more than 10% of total calories;
3. Grams of sugar are limited to no more than 32% of total weight with a ceiling of 14 grams (exceptions: fresh, frozen canned or dried fruits and vegetables);
4. Milligrams of sodium per serving are limited to 300 in chips, cereals, crackers, baked goods and other snack items;
5. Milligrams of sodium per serving are limited to 450 in pastas, meats and soups;
6. Milligrams of sodium per serving are limited to 600 in pizza, sandwiches and main dishes;
7. The portion/pack size for chips, crackers, popcorn, cereal, trail mix, nuts, seeds or jerky is limited to 2 ounces;
8. The portion/pack size for cookies is limited to 1 ounce;
9. The portion/pack size for cereal bars, granola bars, pastries, muffins, doughnuts, bagels or other bakery-type items is limited to 2 ounces;
10. The portion/pack size for non-frozen yogurt is limited to 8 ounces; and
11. The portion/pack size for frozen dessert items, including low fat (1% milk fat) or fat free ice cream, frozen fruit juice bars, or frozen real fruit items is limited to 4 ounces.

The item must meet all of the criteria or it cannot be sold. A list of some allowable items is available on our website at <https://kyeascn1.state.ky.us/nutrition/default.asp>

When the third “window” opens, schools may offer any item they choose in vending machines, school stores, canteen, etc.

Schools will have to take a look at what is in the vending machines and stores to see if those items meet the criteria. The Commissioner has decided that districts should have a transition period to meet these new requirements. That information has been transmitted to districts via a memo from the Commissioner.

I hope this explains where we are in terms of the new regulation.

New Assessment and Reporting Requirements

KRS 158.856 requires that districts assess the nutrition environment in the district as well as the physical activity environment in the district. The Department of Education has provided assessment instruments that districts may use to conduct those assessments. Those assessments must result in a written report issued to local board members, council members and parents.

The report on the nutrition environment must address:

- Compliance with the School Breakfast Program and National School Lunch Program;
- The availability of contracted fast foods;
- A review of access to foods and beverages sold through vending machines, school stores, etc.;
- A list of foods and beverages available to students, including the nutritional value of each; and
- Recommendations for improving the nutrition environment.

The statute is silent with respect to what must be addressed in the report on the physical activity environment. The Department has provided a suggested reporting format that includes the elements in the statute, except for recommendations for improvement.

The statute requires that each local board discuss the findings of each of the reports, solicit public comment regarding the findings and recommendations in the reports and, on or before January 31 of each year, present a plan to improve the nutrition and physical activity environments in the district.

The Department strongly recommends that this plan be integrated into the Comprehensive District Improvement Plan and monitored just as the other elements of that plan are monitored.

The benchmarking, reporting, comment soliciting, presenting a plan to improve the nutrition and physical activity environments, integrating into and monitoring of the plan through the Comprehensive District Improvement Plan process will also enable districts to meet the requirements of the Child Nutrition and WIC Reauthorization Act of 2004. Section 204 of that federal act requires districts to adopt “local wellness policies” for the schools in the district. Those policies must, at a minimum, address nutrition education (certainly a subject that should be a strategy in the plan presented by the local board pursuant to KRS 158.856), physical activity (certainly a subject addressed in the plan required by KRS 158.856) and nutrition standards for food and beverages available on the school campuses of the district (an element of the report on the nutrition environment required by KRS 158.856).

This way districts won’t have separate federal and state plans being developed and monitored and the chaos that would result. The Department will be amending the district assurances, where necessary, to include the requirements of the federal and state language.

Finally, KRS 160.345(11) requires that schools containing grades K-5, or any combination thereof, implement what it unfortunately refers to as “local wellness policies” that provide for moderate to vigorous physical activity daily for students. These “local wellness policies” are not to be confused with, but as they relate to physical activity could be substituted for, the “local wellness policies” referred to by the federal language and referenced earlier. If the school would like, the school may use up to 30 minutes of the instructional day to provide for physical activity for the students. The Kentucky Association for School Councils has developed sample policy language that meets the requirements of this statute. The school is also required to annually assess each child’s level of physical activity. The Department has provided as spreadsheet format that schools may use for this purpose.